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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 July 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Joint Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Cooperation Council established by the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, with regard to the adoption of the EU- Azerbaijan Partnership Priorities
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Delegations will find attached document JOIN(2018) 24 final.

Encl.: JOIN(2018) 24 final



EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 24.7.2018
JOIN(2018) 24 final

2018/0294 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Cooperation Council established by the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, with regard to the adoption of the EU-Azerbaijan Partnership Priorities

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Cooperation Council established by the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part in connection with the envisaged adoption of the Recommendation No XX/2018 to adopt the EU-Azerbaijan Partnership Priorities.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Azerbaijan Partnership and Cooperation Agreement

The Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part ('the Agreement') aims to provide an appropriate framework for the political dialogue and cooperation between the parties allowing the development of political relations. The Agreement entered into force on 1 July 1999.

2.2. The Cooperation Council

The Cooperation Council examines any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest for the purpose of attaining the objectives of this Agreement. The Cooperation Council may make appropriate recommendations, by agreement between the Parties. The Cooperation Council consists of the members of the Council of the European Union and members of the European Commission, on the one hand, and of members of the Government of the Republic of Azerbaijan, on the other. The Cooperation Council has its rules of procedure¹.

2.3. The envisaged act of the Cooperation Council

The Cooperation Council is to adopt by written procedure a Recommendation on the Partnership Priorities regarding their partnership and cooperation ('the envisaged act').

The purpose of the envisaged act is to translate the goals of the revised European Neighbourhood Policy² (ENP) to concrete areas of cooperation and will shape the agenda for regular political and sectoral dialogue.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be adopted by the European Union in the Cooperation Council established by the Agreement on the adoption of the EU-Azerbaijan Partnership Priorities is based on the text of the recommendation annexed to this Decision.

The proposed Partnership Priorities meet the objectives of the revised ENP. They will guide the multiannual programming of EU's financial cooperation with Azerbaijan, to be decided in the Single Support Framework 2018-2020 and replace the ENP Action Plan.

¹ Adopted on 12 October 1999.

² 18.11.2015 JOIN (2015) 50 final.

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’*³.

4.1.2. Application to the present case

The Cooperation Council is a body set up by an agreement, namely the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part.

The act which the Cooperation Council is called upon to adopt constitutes an act having legal effects. The envisaged act is capable of decisively influencing the content of EU legislation, namely the multiannual programming of the financial cooperation under the Single Support Framework. This is because Article 7(2) of the Regulation 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument⁴ provides that for countries for which documents referred to in Article 3(2) of the same Regulation exist, a comprehensive multiannual single support framework shall be adopted in accordance with the examination procedure referred to in Article 16(3) of Regulation (EU) No 236/2014⁵. Such documents shall be action plans, or other equivalent jointly agreed documents, like Partnership Priorities.

The envisaged act does 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

³ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

⁴ OJ L 77 15.3.2014

⁵ REGULATION (EU) No 236/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action, OJ L 77 15.3.2014

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 main objective and content of the envisaged act relate to cooperation with Azerbaijan in the framework of the Partnership and Cooperation Agreement and the revised European Neighbourhood Policy.

4.3. Conclusion

The legal bases of the proposed decision should be Article 37 TEU and Articles 207 and 209 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

The act of the Cooperation Council will be published in the *Official Journal of the European Union* after its adoption.

Joint Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Cooperation Council established by the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, with regard to the adoption of the EU-Azerbaijan Partnership Priorities

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(s) 207 and 209, in conjunction with Article 218(9) thereof,

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

Whereas:

- (1) The Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part ('the Agreement') entered into force on 1 July 1999.
- (2) Pursuant to Article 81 of the Agreement, the Cooperation Council may make appropriate recommendations, for the purposes of attaining the objectives of the Agreement.
- (3) The Cooperation Council will adopt the Recommendation on Partnership Priorities by written procedure.
- (4) The Union position to be taken in the Cooperation Council on the adoption of the EU-Azerbaijan Partnership Priorities has to be adopted by the Council,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Cooperation Council established by the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part shall be based on the draft recommendation of the Cooperation Council attached to this Decision.

Article 2

This Decision is addressed to the Commission and the High Representative.

Done at Brussels,

*For the Council
The President*